

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

ESTATE OF BETTY JEAN ALEXANDER,
Deceased

PLAINTIFF

v.

CIVIL ACTION NO. 1:23-cv-192-TBM-RPM

**NEWREZ, LLC, *formerly known as*
New Penn Financial, LLC, doing business as
*Shellpoint Mortgage Servicing, ET AL***

DEFENDANTS

ORDER

This matter came before the Court on the Motion to Dismiss [2] filed by Defendant NewRez, LLC on August 16, 2023, and the Motion to Dismiss and for Sanctions [16] filed by Defendant Colony Park Condominium Association, Inc., on September 14, 2023, in response to the Plaintiff's original complaint [1-1] filed on June 27, 2023, in the Circuit Court of Harrison County, Mississippi. Pursuant to Plaintiff's Amended Complaint [20] filed on October 5, 2023,¹ the Court finds that NewRez, LLC's Motion to Dismiss [2] and Colony Park Condominium Association, Inc.'s Motion to Dismiss and for Sanctions [16] are MOOT.

The Amended Complaint [20] renders the original complaint [1-1] of no legal effect because the Amended Complaint does not refer to, adopt, or incorporate by reference the original Complaint. *King v. Dogan*, 31 F.3d 344, 346 (5th Cir. 1994) (finding that an amended complaint


¹ The Plaintiff filed the Amended Complaint [20] without leave of court or consent from the Defendants pursuant to Rule 15(a)(1)(B) of the Federal Rules of Civil Procedure. The Defendants then filed a Motion to Strike [23] the Amended Complaint arguing that the Amended Complaint was untimely and that the Plaintiff failed to obtain the Defendants' written consent or leave of court before filing. In response to the Motion to Strike, the Plaintiff filed a Motion for Leave to File an Amended Complaint [26]. Upon review, United States Magistrate Judge Robert P. Myers found that while the Amended Complaint was in fact untimely under Rule 15(a)(1)(B), "leave to amend is appropriate here." [33], pp. 2-3. Accordingly, Judge Myers granted the Plaintiff's Motion for Leave to File an Amended Complaint [26] and found as moot the Defendants' Motion to Strike [23]. As a result, Judge Myers found the Amended Complaint [20] is the operative pleading.

supersedes the original complaint and renders it of no legal effect unless the amended complaint specifically refers to and adopts or incorporates by reference the earlier pleading.”). Therefore, the pending motions to dismiss [2], [16] the original complaint are moot. *See New Orleans Association of Cemetery Tour Guides and Companies v. New Orleans Archdiocesan Cemeteries*, 56 F.4th 1026, 1034 (5th Cir. 2023) (“Because the first amended complaint is nullified, we cannot consider—and thus must dismiss—an appeal . . . stemming from said complaint.”).

IT IS THEREFORE ORDERED AND ADJUDGED that NewRez, LLC’s Motion to Dismiss [2] is MOOT.

IT IS FURTHER ORDERED AND ADJUDGED that Colony Park Condominium Association, Inc.’s Motion to Dismiss and for Sanctions [16] is MOOT.

This, the 21st day of November, 2023.


TAYLOR B. McNEEL
UNITED STATES DISTRICT JUDGE